



The New Mexico Tribal-State Judicial  
Consortium Annual Report - 2015



### Message from the Co-Chairs

As Co-Chairs of the New Mexico Tribal-State Judicial Consortium, we would like to present the following 2015 Annual Report. This report highlights the work the Consortium has done throughout the year and activities planned for 2016.

The Tribal-State Judicial Consortium has worked hard to establish and maintain local relationships and communications between both Tribal and State Courts by working collaboratively on cross-jurisdictional issues.

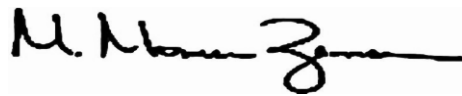
While the Consortium has made progress, there is still work needed.

We intend to keep up the momentum and continue to achieve our goals.

Thank you.



Judge William Bluehouse Johnson



Judge Monica Zamora



## Mission

The Mission of the New Mexico Tribal-State Judicial Consortium is to encourage and facilitate communication and collaboration between State and Tribal Court judges on common issues, focusing on domestic violence, domestic relations, child custody, child support, child abuse and neglect, and juvenile justice and addressing questions of jurisdiction and sovereignty as they relate to each particular issue.

From this Mission Statement three goals have been set:

- ✎ Create rapport between State and Tribal Judges
- ✎ Educate and train State/Tribal Judges and Tribal leadership
- ✎ Continue to review State services for Native children and families on and off the reservation.



## Introduction

The Tribal-State Judicial Consortium has focused on the following areas:

- **DEVELOP AND MAINTAIN RELATIONSHIPS:**

Quarterly Consortium meetings offer briefings by subject matter experts who can address situations involving cross-jurisdictional issues, such as orders of protection and mental health orders of commitment. The meetings also provide an opportunity for discussion between Tribal and State Judges about current issues and case law affecting Indian Country. The Consortium also promotes relationships and communications to help Tribal and State Courts learn more about the challenges they each encounter and begin working together to address them. In addition, there are training opportunities provided. The meetings alternate between State and Tribal locations so that our members can also visit and learn about each other's courts and programs.



Growing out of a subcommittee of the Court Improvement Project on child welfare years ago, the Consortium was formally recognized by the New Mexico Supreme Court as one of its advisory committees in 2006. Seven Tribal and State Judges represent the various Pueblos, Tribes, and the Navajo Nation and all levels of New Mexico Courts on the Consortium. These fourteen members, with the assistance of three alternate members, offer a forum to help raise awareness among these Courts about legal issues affecting both court systems.



- **OUTREACH:**

The Consortium is currently concentrating on projects involving the Indian Child Welfare Act (ICWA), full faith and credit/comity, and improving outreach and communications with the Tribal and State Courts. The National Criminal Justice Association, Tribal Law and Policy Institute, and the National American Indian Court Judges Association have recognized the Consortium for its efforts in outreach and collaboration.

### **Consortium Work for 2015**

In January 2015, Consortium members attended the 22<sup>nd</sup> annual Children's Law Institute Conference in Albuquerque, New Mexico and the first Consortium meeting for the year was held. The information presented involved Problem-Solving Courts and Tribal Healing Wellness Courts.

In April 2015, the Consortium met for a full day to discuss the organizational history, current environment, and identify its goals for the next five years. The meeting was facilitated by Indigenous Collaboration Inc. and was sponsored by the Casey Family Programs. Radar priorities were outlined as those things that need the Consortium's immediate attention. These include the following:

- Recognition of violations of protective orders
- Access to state services for Indian Children and Families

- Memorandum of Understanding that are simplified for full faith and credit/comity
- More involvement of the federal partners
- Collaboration with neighboring jurisdictions including tribe to tribe
- Shared resources and services to include tradition and culture
- Collaboration with state court judges on child custody decisions
- Model ordinances for customary marriage and domestic violence implementation
- Court visitations
- Tradition and due process
- Juvenile detention alternatives
- ICWA- Indian Child Welfare Act
- Title IV-E



The group was asked to consider and describe what would be in place in the year 2020 if this group of tribal judges, state judges, and allies were to effectively collaborate and have a visible impact in the policies, practices, and administering of justice in New Mexico.

The goals for each Committee were identified and timelines developed. The Committees consisted of:

- 🏛️ Rapport/Communication-*Chaired by Judge Monica Zamora and Judge William Bluehouse Johnson*
- 🏛️ State Services for Indian Children and Families-*Chaired by Judge Randy Collins*
- 🏛️ Full Faith and Credit-*Chaired by Judge Vincent Knight*
- 🏛️ ICWA/Title IVE-*Chaired by Judge John Romero*
- 🏛️ Drug Court (New)-*Chaired by Judge Bruce Fox*
- 🏛️ Juvenile Detention Alternative Initiative (JDAI) (New)-*Chaired by Judge Monica Zamora*

In July 2015, the Consortium traveled to Taos for the quarterly meeting. The meeting was held at the Butterfly Healing Center, a treatment facility for Native and Non-Native children. Governor Romero of Taos Pueblo and other tribal leaders attended this meeting. Donnalyn Saracino (Acoma) made a presentation on behalf of the newly formed Tribal ICWA Consortium. The committee provided reports on the work each are doing to accomplish their identified goals.



Finally, in November 2105, the Consortium met in Mescalero, NM to review the work of the committees and start the planning for 2016.

## **COMMITTEES:**

### **RAPPORT/COMMUNICATION**

The Rapport/Communication Committee has made it a continual goal to maintain the continued relationship building and on-going communication between State and Tribal Judges in order to accomplish the overall Tribal State Consortium's purpose as well as continue to provide support to the other five Committees.

The Committee continues to work on reaching out to Tribal and to State Leadership in New Mexico. Along with this annual report, a letter to our State Representatives and Senators, Tribal Courts, and Tribal Governors was sent to introduce them to the Tribal-State Consortium and inform them about our work to encourage rapport between our leaders. The Consortium also facilitated professional relationships that result in greater collaboration, such as the presentation at the Tribal Leadership Conference held in September 2015 at the Tamaya Resort in Santa Ana Pueblo and in August 2015 for the National Council of Juvenile and Family Court Judges Child Abuse and Neglect Institute. The following outlines additional work completed.

<b>Date</b>	<b>Task</b>	<b>Purpose</b>	<b>Outcome</b>
January 2015	Meeting	Children's Law Institute and	Attendance at training and

		Quarterly Meeting.	presentation on Tribal Healing to Wellness Courts.
May 2015	Meeting	Invitation from Taos Pueblo to invite tribal leaders to attend the July Consortium meetings.	Taos Governor and several tribal leaders attended lunch at Consortium meeting in July 2015 and toured the Butterfly Treatment Center.
August 2015	Meeting	Committee meeting to discuss continued outreach to tribal entities, legislators, and others.	
August 2015	Magistrate Conference		Two Tribal Judges attended the Magistrate Conference
September 2015	American Indian Law Tribal Leadership Conference	Communication	25 Tribal-State brochures were handed out at the Conference
November 2015	Meeting	Invitation from Mescalero to host the quarterly meeting and to tour the court.	Mescalero leadership provided an introduction of their work and gave tours.
November	REC Conference	All Pueblo	The Co-Chairs



2015		Governors' Council meeting	presented to the All Pueblo Governors Council the work of the Consortium as well as to issue a letter of support for Tribal Healing Wellness Courts
December 2015	Meeting	Navajo Nation Judicial Branch	Judge Monica Zamora attended the meeting with the Navajo Nation Judicial Branch and Supreme Court to explain the work of the Consortium with details of each of the committee projects and accomplishments.
December 2015	Meeting with Santa Fe Council on International Relations/Human & Civil Rights Advocacy and Awareness	Meet with international group of lawyers and human rights advocates from various Middle Eastern countries.	Judge Taggart met with HCRAA

### **PLANS FOR 2016:**

Through the assistance from Casey Family Programs, ongoing Tribal State collaboration meetings will occur to continue to identify issues and prioritize those issues. The first meeting was held in November 2015,

which brought together leaders from the Tribal-State Judicial Consortium, the ICWA Consortium, and CYFD. There are similar issues each group is addressing such as ICWA compliance, practices, tribal notifications, children's code changes, ongoing education and training. Another meeting is scheduled to convene in January 2016 to discuss the best way to collaborate and share resources.

The Judicial Information Division is also working on updating all AOC program websites. This will be the opportunity to create a user friendly website that will assist state and tribal judges, as well as the legal community finding necessary information.

### State Services

The primary action item of the State Services Committee this year has been to obtain state recognition of tribal court orders and allowing tribal members access to state services. It is beyond dispute that Native American children and families have a great need for increased services.



Expanding tribal jurisdiction is necessary if access to state services are to be adequately provided to Native Americans. Studies show that culturally sensitive programs and exposure to tribal traditions, including those promoting tribal customs, are more effective in reducing recidivism, furthering justice and reform. Empowered tribal courts are less likely to alienate youth and families from the tribal community and tribal customs.

To meet this goal, the Services Committee is working to develop model tribal court orders that can be recognized by state courts. The approach is based on Project Passport, the uniform cover sheet approved by the New Mexico Supreme Court. The Project Passport cover sheet sets the minimum requirements that must be met before the order can be enforced by another jurisdiction.

The model orders for tribal courts would be enforceable in state court and would meet state requirements. Therefore, if a tribal resident is in need of a service that cannot be provided locally, the tribal court could use the requirements stated in the model order to obtain services from the state. The tribal court would retain jurisdiction and monitor the individual's progress while ensuring that tribal customs and traditions are being used as part of the treatment.

The Service Committee's first step was to pick an area of needed state services. The committee decided to start with Juvenile Involuntary Commitment orders, as New Mexico law currently provides for state recognition of tribal court orders (§32A-6A-29). New Mexico law recognizes that the factors and issues surrounding mentally incapacitated adults are similar to that of juveniles and the committee is working to develop model orders for the involuntary commitment of adults and juveniles.



The services committee is working on other action items such as: 1) model orders for tribal access to other needed state services; 2) the development of a lay counsel or a lay advocate program for better representation in tribal courts; 3) drafting a model

ordinance/law that can be used by tribes in implementing the federal VAWA law; 4) the identification of an index and/or online directory of state services, 5) improved tribal notification by the state of tribal youth in state custody and 6) how one can gain access to state services such as developing MOUs.

### **PLANS FOR 2016:**

After receiving feedback from the Consortium on the model orders, they will be submitted to the Supreme Court Rules Committee for consideration and adoption. Once approved, the Committee will develop a process to ensure all state and tribal courts have access to the forms.

## **Full Faith and Credit**

The Full Faith and Credit Committee works on educating state and tribal judges. In January 2015, Chair Judge Vincent Knight and Judge Randy Collins presented on ICWA in relation to qualified expert witnesses.

There has been ongoing collaboration with the VAWA Attorney regarding training efforts and recommendations for tribal-state in 2016. Patricia Galindo is currently training all district court clerks on orders and the Committee will need to determine which tribal locations are using and then reach out and offer technical assistance if not. She also has set up training with BIA law enforcement officers. A presentation was made during the November 2015 quarterly meeting, regarding protective orders.



One of the more critical topics is understanding and implementing the constitutional concept of Full Faith and Credit provided in the US Constitution between each of the states and the federal court. Unfortunately, there is a question whether this principle applies between the state and tribal judiciary. This is a critical issue for states, like New Mexico, that have tribal courts. Ideally, both courts should recognize each other's orders when presented.

New Mexico leads the Nation in recognizing the tribal court orders by both statutes and case opinions. The two cases on FFC in New Mexico are HALWOOD V. COWBOY AUTO SALES, 1997-NMCA-098, 124 N.M. 77, 946 P.2d 1088 and JIM V. CIT FIN. SERVS. CORP., 1975-NMSC-019, 87 N.M. 362, 533 P.2d 751 (S. Ct. 1975). These cases held that tribal court orders that provide minimum due process are entitled to Full Faith and Credit. Additionally, NM Uniform Interstate Enforcement of Domestic Violence Protection Orders 40-13A-1 specifically mandates that tribal court orders regarding protective orders shall be honored by state courts. The NM State Legislature is to be commended in this enactment. There remains a need for the State Legislature to enact similar legislation on a number of topics.

Many of the challenges concern the general lack of knowledge about the current law among the state and tribal judges. For example, the Indian Child Welfare Act mandates Full Faith and Credit in child custody issues and the Consortium has made great strides in teaching state judges on how best to implement the ICWA in their courts. There are other federal laws that mandate FFC and these are taken up by the FCC Consortium Committee. (See Gutierrez Case) Of these, perhaps the Violence Against Women Act is of most importance. The federal Act requires each jurisdiction to give Full Faith and Credit to protective orders issued by the respective state or tribal court. (See Uniform Interstate Enforcement of Domestic Violence Protection Orders 40-13A-1) Both jurisdictions' law enforcement agencies play a vital role in the enforcement of these orders. Without enforcement, victims of domestic violence have no protection. Project Passport is a nation-wide effort to address this issue by designing a "front page" that provide sufficient information to allow a law enforcement officer to recognize and enforce the protective order. In addition, 18 USC 2265e allows tribes to exclude non-Indians from their jurisdiction who violate a state or federal protective order.

### **Plans for 2016:**

The FFC Consortium Committee has been working diligently to inform state and tribal judges about these laws and cases to ensure their recognition and enforcement. This makes both citizens of their respective jurisdictions safer. In this regard, Joint Powers Agreements, Cross-Deputization of law enforcement officers are very important.

The New Mexico Foreign Judgment Act is sort of a last resort catch-all to recognized civil judgments of the tribes in New Mexico. Many tribes are not familiar with the requirements of this law to gain recognition. The FFC Consortium works hard to make this known to the tribes.



As set out above, the FFC Committee has much work to address:



*Goal #1:* Continue to provide updates and awareness training to both state and tribal judges. This is the primary mandate of the Consortium and specifically, FFC.

*Goal #2:* Contact district judges and tribal judges to participate and attend the quarterly meetings of the Consortium to establish rapport and open communication and a dialogue between the two jurisdictions. Consortium meetings are generally held and hosted by a tribal consortium member and often, tribal judges do not know or even communicate with their district judges.

*Goal #3:* Local CYFD officer managers need to keep apprised of tribal social service workers and vice versa. The Consortium will foster their communication by addressing their specific needs to share resources.



*Goal #4:* Whenever possible or whenever invited, member judges of the Consortium should present on FFC and other topics of interest to state judges and special service providers at conferences in order to increase awareness and foster communication.

A University of New Mexico law student extern will be used to research Full Faith and Credit as well as Comity and draft a position paper. A brief will also be completed on recent court cases which impact full faith and credit. A cover sheet for full faith and credit will be generated and sent the Supreme Court Rules Committee. The Committee will also work with both State and Tribal judges to set up regional meetings to provide information and conduct listening tours to identify needs and concerns.

### **ICWA/Title IVE**

In May 2015, the Bureau of Indian Affairs (BIA) held public meetings regarding the proposed ICWA regulations. The ICWA/Title IV-E Committee monitored the progress and some attended the ICWA Consortium meetings.

In July 2015, Chair Judge John Romero participated in the Navajo Children and Family Services mid-year meeting. The group of ICWA and adoption workers received information regarding the importance of notice to Navajo Nation of members' involvement in private adoption and child welfare cases well before the legal cases was filed.

The Tribal Social Workers formed the ICWA Consortium to start looking at practices around the state. Committee members are collaborating to ensure ICWA compliance, conduct training, and review practices.

Through funding from the Corrine Wolff Children's Law Center, the ICWA bench card for judges was updated and a one-page summary generated to assist judges on the bench. A webinar for State and Tribal Judges was held in September 2015 on key concepts and recent clarifications. The purpose was to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families.

With the assistance of the Children Youth and Families Department, a Title IV-E bench card was also created to assist with IV-E compliance.

### **PLANS FOR 2016:**

There will be a Bureau of Justice grant to support the creation of effective practice model partnerships stakeholders to effectively implement ICWA. The ICWA/Title IVE Committee will look at applying and will work with the ICWA Consortium and CYFD to assist.

A federal grant will be reviewed and hopefully funded to see if work could be done to improve ICWA notices, however, support from the Supreme Court is needed to increase State funds to assist with moving toward other goals.

### **Drug Court**

After a presentation on Healing to Wellness Courts in January 2016, the Consortium formed a small Drug Court Committee to promote the continued use and expansion of State Drug Courts and Tribal Healing to Wellness Courts around the State. Healing to Wellness Courts are similar to Drug Courts in that they are



both aimed at assisting non-violent addicted criminal offenders to get clean and become better community members. This is accomplished by diverting criminal defendants from the typical criminal justice system into these specialty “courts” which are essentially stringent outpatient treatment programs that typically take a year to complete.

In 2015 the Committee met twice and informally met at the quarterly Consortium meetings. The Committee generated a memorandum in support of Tribal Healing to Wellness Courts (attached in Appendix A).

### **PLANS FOR 2016:**

During 2016 the Committee will be working on the following:

- A memorandum of support of Drug Courts and Healing to Wellness Court for proposed adoption by the Consortium. This will include a review of procedures and proposed adoption of uniform standards, recommendations regarding state/tribal collaboration to allow transfer of criminal defendants to courts based on their residence location, and statistics showing the success of Drug Courts and Healing to Wellness Courts.
- Identify and publish to the Consortium potential funding sources to support Drug Courts and Healing to Wellness Courts.

### **Juvenile Detention Alternative Initiative (JDAI)**

The overall targeted goal for the JDAI Committee is to develop a Tribal JDAI Model that can be incorporated into the overall State to Scale effort in getting JDAI established throughout the State of New Mexico.

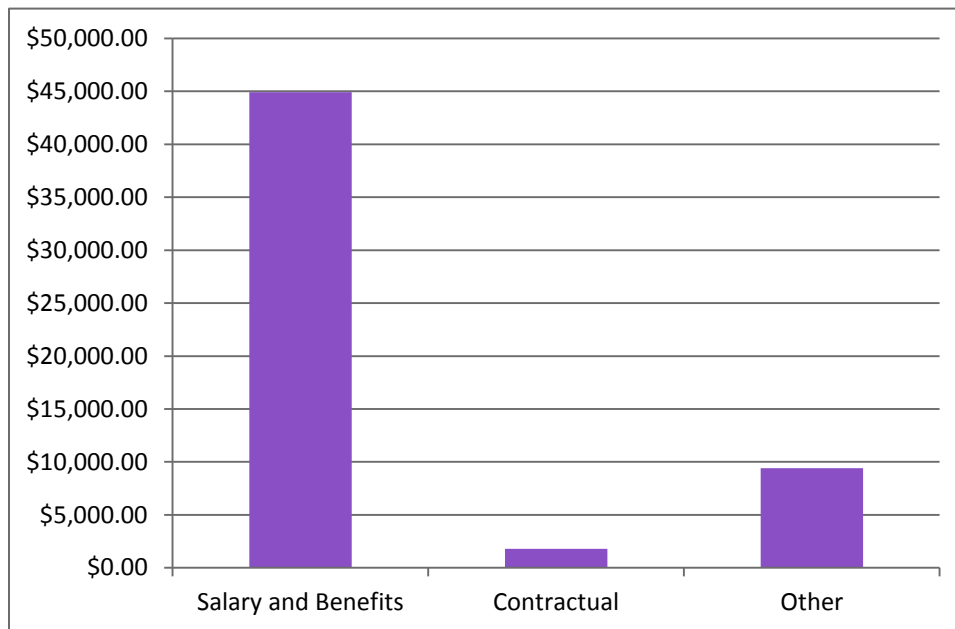
The Isleta Pueblo has been identified as the place to create and test the JDAI model. Funding and technical assistance will come from the Annie E. Casey Foundation and The Burns Institute. Members of the Isleta Pueblo attended the national JDAI Conference in Arizona. The Pueblo of Isleta is also working with The Burns Institute to conduct a systemic data and needs analysis. The result of this analysis will be to determine the next step for this pilot project.

### **PLANS FOR 2016:**

Continued work and the evaluation of the pilot project will be completed and a plan generated to include additional tribal sites.

### **Funding**

Funding for the Tribal-State Judicial Consortium comes from state resources which provide matching funds to the Court Improvement Project.



The funding for Tribal-State is generated from State General Funds that are used for federal grant match to the Children's Bureau in support of Children's Court Improvement Commission. The total amount allocated was \$56,100 and all of the funds were expended. A portion of the funds went to Contractual Services, which were used for a facilitator for a Children and Family Services Department retreat. The funds expended on salary and benefits were for half of a full-time Senior Statewide Program Manager. The remaining funds were used for other costs such as travel for state and tribal judges, training, supplies, room rental fees, and telecommunication costs.

**Note:** In FY 2016, the funding was cut to \$30,800. In order to assist with the initiatives and to support the committees, the Tribal-State funds would request an increase in FY 2017.

## Summary

The Tribal-State Judicial Consortium has grown over the years and the state and tribal judges have focused on initiatives that seek continuous quality improvement. The Consortium is known nationally for their work with requests from other tribal and state judiciary to attend our quarterly meetings for 2016; two visits have been planned.

We are proud that our efforts have received national attention and recognition. We strive to continue growing and cultivating the collaboration between two judicial systems for the benefit of all New Mexico citizens.



**Appendix includes the following:**

- **Supreme Court Order with Membership**
- **Brochure**
- **ICWA Bench Card**
- **Title IVE Bench Card**
- **Drug Court Memorandum**

